Supreme Court, U.S.
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No. 86-332

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

LOUIS A. MOONEY, d/b/a BETHEL STEEL CO.,
a Sole Proprietorship
(Louis A. Mooney and Norma Jean Mooney, his wife)
Petitioner,

vs.

GREATER NEW CASTLE DEVELOPMENT CORPORATION,
a Pennsylvania Non-Profit Corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED

I. Whether the opinion and order of the Supreme Court decided a question of ownership of real estate and not a question of seizure of property rights without a hearing.

II. Whether Petitioner failed to place before the Pennsylvania Supreme Court any issue as to any alleged violation of Petitioner's due process rights in the retaking of possession of the real estate in question by Respondent.

III. Whether Respondent violated any due process right of the Petitioner where it has been adjudicated that Petitioner was in default of a lease agreement, had no interest in the subject premises, and Respondent, as landowner, peaceably retakes possession of the premises.

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SUMMARY OF ARGUMENT

The Petitioner contended that he held an equitable interest in certain real estate which Petitioner had conveyed to Respondent to enable Petitioner to receive benefits under the Pennsylvania Industrial Development Authority Act of 1956, May 17, P. L. (1955) 1609, under a theory of resulting trust.

The Supreme Court of Pennsylvania found that no circumstance exists in this case which raises an inference that Respondent should not have the beneficial interest in the property conveyed to it. Any rights of Petitioner to the subject real estate were lost when Petitioner failed to discharge duties under a lease agreement between the parties.

The opinion and order of the Supreme Court does not concern itself with a question relative to any due process rights of Petitioner, but only with the law of Pennsylvania relative to formation of resulting trusts.

The Pennsylvania Supreme Court determined that Petitioner did not place before that Court any due process issue regarding the procedure utilized by Respondent to regain possession of its property. That Court noted that such issue was not set forth in the Respondent's statement of questions invoked before the Superior Court, as required by Pennsylvania Rule of Appellate Procedure, Rule 2116, and therefore not considered by the Pennsylvania Superior or Supreme Courts.

It is consistent with federal law for a landlord to retake possession of his property peaceably against Petitioner who, after opportunity to be heard, has been adjudicated to have been in default and to have no interest in the premises, equitable or otherwise.

The opinion of the Pennsylvania Supreme Court is consistent with federal law, and the Supreme Court has not decided any federal question in a way in conflict with any applicable decisions of this Court.

ARGUMENT

I. The decision of the Supreme Court of Pennsylvania decided a question of ownership of real estate under Pennsylvania law and not a question of Petitioner's Fourteenth Amendment rights of due process.

The Petition for a Writ of Certiorari filed in this case sets forth as its jurisdictional basis 28 U.S.C. 1257 which, in pertinent part, provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (3) By Writ of Certiorari, where . . . the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is especially set up or claimed under the Constitution, treaties or statutes or of commission held or authority exercised under the United States.

In order for the judgment of the Pennsylvania Supreme Court to be reviewable by this Court, said judgment must raise a question as to a violation of the due process rights of Petitioner under the Fourteenth Amendment to the Federal Constitution.

Accordingly, Rule 17(c) of the United States Supreme Court Rules provides that one of the considerations in

determining when this Court should exercise its discretion to grant a Petition for Writ of Certiorari is whether the State Court has decided an important federal question in a way in conflict with applicable decisions of this Court.

In the case at bar, the Pennsylvania Supreme Court did not decide a question of federal law. A careful review of the opinion of that Court clearly shows that the Court considered only whether a resulting trust was established in favor of Petitioner thereby determining equitable ownership of the real estate in question. In determining that no resulting trust in favor of Petitioner existed, the Court did not decide a federal question, but rather interpreted Pennsylvania law relative to trusts and property law. Therefore, the opinion from which review is sought cannot be found to relate to Petitioner's due process rights under the Constitution, nor can the opinion be found to be in conflict with decisions of this Court regarding a federal question.

II. Petitioner did not place before the Pennsylvania Supreme Court any issue as to violation of his due process rights in the retaking of possession of the property by Respondent.

Petitioner contends that the exercise of self-help in the taking of possession of the subject real property by Respondent, in which property Petitioner had no interest pursuant to Pennsylvania law, amounts to a violation of his due process rights.

The Pennsylvania Supreme Court refused to consider that issue, finding that the issue was not properly before it. The Pennsylvania Supreme Court noted that the Superior Court had refused to consider the issue because it was not set forth in the statement

of questions before the Superior Court as required by Pennsylvania Rule of Appellate Procedure, Rule 2116. (Petitioner's Appendix, page 9(a), ft. 4)

It is respectfully submitted that this Court should not pass upon a constitutional issue not addressed in the Pennsylvania Supreme Court opinion and judgment sought to be reviewed.

III. A landowner who peaceably retakes possession of his real estate does not violate the due process rights of a party having no interest in the real estate.

The facts of this case do not suggest any violation of Petitioner's due process rights.

The right to possession of the property was never an issue raised by the Petitioner throughout the proceeding, the only issue being the Petitioner's alleged equitable interest therein. Petitioner had a full and fair opportunity to litigate in these proceedings the existence of any alleged equitable interest.

Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed. 2d 554, 92 S.Ct. 1983 (1972) cannot be interpreted to provide that a landlord cannot peaceably retake possession of his premises from a tenant who has defaulted and forfeited his rights pursuant to a lease agreement. It would be absurd to interpret *Fuentes* to require a due process hearing in every landlord-tenant case where no issue exists as to the landlord's right of possession.

It is significant that Petitioner has never asserted or argued an involuntary departure from the premises on his part. Petitioner has attempted to raise the due process issue, not with regard to an alleged right of possession, but rather with regard to alleged equitable ownership interest in the premises. However, the issue of retaking possession bears no relationship to

Petitioner's equitable ownership in the premises after an admitted default.

The subject matter of this case is exclusively whether Petitioner owns an equitable interest in the real estate. The procedure device utilized to retake possession is not a factor to be considered, and it totally irrelevant to a consideration of any equitable interest in Petitioner. Therefore, the constitutionality of that procedure would have no place in the analysis of Petitioner's claim, and could not affect the decision of the Pennsylvania Supreme Court, given the nature of the action filed by Petitioner.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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